

K.S.A. 44-501 and K.S.A. 44-508(g) make it claimant's burden in proceedings under the Workers Compensation Act to prove claimant's right to an award of compensation by

proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence.

In this case, claimant suffered what appeared to be a minor stroke while working for his employer on March 17, 1995. At that time claimant was apparently exposed to what has been described as hydrogen sulfide gas ( $H_2S$ ). Shortly after that claimant was taken to Elkhart Hospital where he came under the care of Dr. Ramon Quijano, Jr. Dr. Quijano's initial impression was acute toxic chemical exposure, acute bronchitis, carboxyhemoglobinemia and a history of mitral valve prosthesis. Claimant has a significant medical history of rheumatic heart disease, mitral valve prosthesis and emphysema with asthma. At the time of the injury, claimant was using the inhaler Proventil, Coumadin, and Lanoxin. Claimant was a smoker, consuming in excess of one pack a day. Claimant also had a history of left side weakness, similar to his stroke symptoms occurring one week prior to his date of injury and earlier approximately six months preceding these events. Claimant's early symptoms included left side weakness, episodes of staring and left hand numbness. CT scans of the head demonstrated hypodensities of both the parietal and frontal cerebrum and right corpus callosum and suggested a right cerebral infarction.

Medical evidence included the report of Dr. Ramon Quijano, Jr., dated April 5, 1995. Dr. Quijano felt that claimant's toxic chemical exposure may have caused a sudden episode of anoxic hypoxemia or tissue anoxemia of the brain, which could account for the right side cerebral vascular accident with left-sided manifestation. Dr. Allen J. Parmet, M.D., M.P.H., Medical Director of the St. Luke's Occupational Medicine Group in Kansas City, indicated that claimant's symptoms did not stem from toxic exposure to  $H_2S$  gas. He felt claimant's risk for cerebral infarctions due to the presence of a preexisting prosthesis, atrial fibrillation, hypertension, emphysema and tobacco addiction was high. His carboxyhemoglobin level indicated a very heavy tobacco use at the time of the incident. He also found no temporal connection with  $H_2S$  gas exposure when there were at least two reported episodes of identical symptoms preceding the traumatic attack on the date alleged. He further opined that  $H_2S$  gas does not cause vascular accidents as suffered by claimant on the date of injury. It is noted that the  $H_2S$  monitor claimant had at the injury site registered thirty-two (32) parts per million. This level is well below the safe level restrictions for hydrogen sulfide gas and well below the two hundred fifty (250) parts per million required to cause pulmonary edema. At levels lower than this the gas will be absorbed in the upper airways and cause irritation but does not cause vascular accidents. Dr. Parmet found no relationship between claimant's ongoing symptomatology and his exposure to  $H_2S$  gas at the job site. Dr. Quijano found acute toxic inhalation as being a significant factor in claimant's symptomatology but the toxic irritant was never identified during the testing.

In establishing his right to an award of compensation claimant must prove his right to recovery by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984). The medical evidence of Dr. Parmet clearly states no association exists between claimant's symptoms and his exposures at work. The medical evidence of Dr. Quijano, on the other hand, says the relationship may exist, but the doctor does not say so within a reasonable degree of medical probability. As such, the Appeals Board finds claimant has failed to prove by a preponderance of the credible medical evidence his entitlement to benefits in this instance.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated January 26, 1996, should be, and is hereby, affirmed and remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: William J. Graybill, Elkhart, KS  
P. Kelly Donley, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director